



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

April 24, 1996

Ms. Christine T. Rodriguez
Staff Attorney
Legal and Compliance Division MC110-1A
Texas Department of Insurance
P.O. Box 149104
Austin, Texas 78714-9104

OR96-0602

Dear Ms. Rodriguez:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 38702.

The Texas Department of Insurance (the "department") received an open records request for certain records that you contend may be withheld from the public pursuant to sections 552.103, 552.107, and 552.111 of the Government Code. The department submitted representative samples of the requested information. We have examined the information submitted to us for review.

Section 552.103(a) excepts from required public disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and,

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

Section 552.103(a), the "litigation exception," excepts from disclosure information relating to litigation "to which the state or a political subdivision is or may be a party." The department has the burden of providing relevant facts and documents to show that the section 552.103(a) exception is applicable in a particular situation. Although section 552.103(a) gives the attorney for a governmental body discretion to determine whether section 552.103(a) should be claimed, that determination is subject to review by the attorney general. Open Records Decision Nos. 551 (1990) at 5, 511 (1988) at 3.

To secure the protection of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated, and that (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision Nos. 588 (1991), 551 (1990) at 4. The department must meet both prongs of this test for the information to be excepted under section 552.103(a). You assert that section 552.103 applies, because the information sought by the requestor relates to an ongoing investigation which is "directly related to anticipated litigation," as evidenced by the submitted records. See Open Records Decision No. 588 (1991) at 7 (information related to contested cases, under Administrative Procedure and Texas Register Act before administrative agency is "information relating to litigation" for purposes of litigation exception).¹ See also Open Records Decision No. 301 (1982) at 2.

In this instance you have made the requisite showing that the requested information relates to reasonably anticipated litigation for purposes of section 552.103(a). The requested records may therefore be withheld pursuant to section 552.103, but only to the extent that the records have not been previously seen by the opposing parties in the anticipated litigation.² Absent special circumstances, once information has been obtained by all parties to the litigation, e.g., through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). To the extent that the opposing parties have seen or had access to these records, there would be no justification for now withholding those records from the requestor pursuant to section 552.103(a). We also note that the applicability of section 552.103 ends once the litigation has been concluded.³ Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

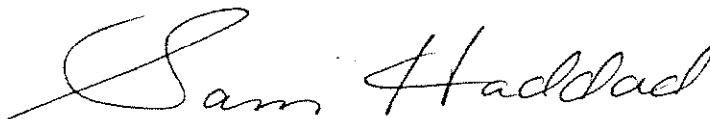
¹The Administrative Procedure and Texas Register Act ("APTRA"), V.T.C.S. art. 6252-13a is the statutory predecessor to the Administrative Procedure Act ("APA"), Government Code chapter 2001.

²As we resolve your request under section 552.103(a), we need not address your claimed exceptions under sections 552.107 and 552.111 at this time.

³The applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records.⁴ If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Sam Haddad". The signature is fluid and cursive, with the first name "Sam" and last name "Haddad" clearly distinguishable.

Sam Haddad
Assistant Attorney General
Open Records Division

SH/rho

Ref.: ID# 38702

Enclosures: Submitted documents

cc: Ms. Shirley Whitson
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(w/o enclosures)

⁴In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not reach, and therefore does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office